

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Cr.B.A.No.S- 831 of 2019

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| DATE | ORDER WITH SIGNATURE OF JUDGE |
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1. For orders on office objection
2. For hearing of main case.

20.09.2019.

Mr. Mujjan Ali Panhwar, advocate for applicant
Ms. Safa Hisbani, A.P.G.
Mr. Khalid Saeed Soomro, advocate for complainant.
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Irshad Ali Shah J;- It is alleged that the applicant with rest of the culprits was found tempering with the pipe line of PARCO for that he was booked and reported upon by the police.

2. The applicant on having been refused post arrest bail by the learned Additional Sessions Judge-III, Dadu has sought for the same from this court by way of instant application U/s 497 Cr.P.C.

3. It would be necessary to mention here that the instant bail application was placed before my learned brother (Justice Amjad Ali Sahito) who after hearing the same announced its dismissal but at the time of dictating the order he came to know that the bail application of co-accused Ghulam Hussain alias Sachal (B.A.No.770 of 2019) has been disposed of by me therefore, he directed the office to place the instant bail application before me by making following observations:

“These bail applications were heard in Court so also announced and dismissed. However, while dictating the order in Chamber, I have come to the conclusion that previous to these bail applications, the bail application of co-accused namely Ghulam Hussain alias Sachal son of Jumo Khan bearing No.S-770 of 2019 was decided by my learned brother (Mr.Justice Syed Irshad Ali Shah), who is also sitting here at Hyderabad Circuit Court. Further, while noting this fact

earlier, the undersigned vide order dated 30.08.2019 had already directed the office to place the applications before my learned brother (Mr. Justice Syed Irshad Ali Shah) in view of dicta laid down in the cases of '**NASIR AHMED and another v. THE STATE and others**' [PLD 2014 Supreme Court 241] and '**TARIQUE BASHIR and 5 others v. THE STATE** [PLD 1995 Supreme Court 34] but mistakenly today these cases were fixed before the under-signed.

In view of above of position and taking guidance from the order passed by the Hon'ble Supreme Court of Pakistan in the case of '**Haji MOHAMMAD IBRAHIM v. THE DEPUTY COMMISSIONER, THARPARKAR AND EX-OFFICIO CONTROLLING AUTHORITY, TOWN COMMITTEE JAMSABAD AT MIRPURKHAS**' [1971 SCME 63], the oral pronouncement of the order in Court is recalled. Office is directed to place these bail applications before my learned brother (Mr. Justice Syed Irshad Ali Shah) on **20.09.2019**, for which notice to all parties concerned be issued".

4. In compliance to above directions, the instant bail application was placed before me by the office for its disposal in accordance with law.

5. It is contended by the learned counsel for the applicant that the applicant being innocent has been involved in this case falsely by the complainant party; the FIR has been lodged on 3rd day of incident; 161 Cr.P.C statements of the PWs have been recorded on 4th day of the FIR; no damage to the pipe line has been caused and it is the case of mere attempt to commit theft. By contending so, he sought for release of the applicant on bail on point of further enquiry.

6. It is contended by learned A.P.G for the State and learned counsel for the complainant that earlier bail application of the applicant has been dismissed by this Court as withdrawn and the applicant is not entitled to grant of bail as he has attempt to cause damage to public exchequer. In support of their contention they have relied upon case of **Abdul Hameed vs State (2016 SCMR 748)**.

7. In rebuttal to above, it is contended by the learned counsel for the applicant that the earlier bail application of the applicant was dismissed as withdrawn with permission to the applicant to repeat the same. By contending so an impression was created by him that the earlier order of dismissal of the bail application of the applicant as withdrawn could not operate as resjudicata.

8. I have considered the above arguments and perused the record.

9. The FIR of the incident is lodged on 3rd day of the incident, without plausible explanation, such delay could not be lost sight of. The applicant as per FIR was identified by PWs Muhammad Haroon and Mir Murtaza, they significantly have been examined by the police u/s 161 Cr.P.C statement on 4th day of registration of FIR, such delay in recording their 161 Cr.P.C statements could not be overlooked, which indeed reflects consultation. Even otherwise, the identity of the applicant at night time on torch light is appearing to be a weak piece of evidence. No damage is caused to the pipe line. No theft of oil is committed. The earlier bail application of the applicant was not dismissed on merits. In these circumstances the applicant is found entitled to be released on bail on point of further enquiry.

10. The case law which is relied upon by learned A.P.G for the State and learned counsel for the complainant is on distinguishable facts and circumstances. In that case the accused was apprehended at the spot with stolen crude oil. In the instant case no oil is stolen what to talk of its recovery.

11. In view of above, the applicant is admitted to bail subject to his furnishing surety in sum of Rs.50,000/-(Fifty thousand) and PR bond in the like amount to the satisfaction of learned trial court.

12. The instant bail application is disposed of accordingly.

JUDGE

Ahmed/Pa

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